

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3504 OF 2006

Ajay Sharad Patil	Petitioner
versus	
M/s.Metallurgical Services	
and another	Respondents

Mr.K.P.Anil Kumar for petitioner.

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 08th November 2006

PC :

1. Heard. Petitioner challenges an order passed by the Industrial Court, Bombay in Revision Application No.183 of 2005 whereby the Industrial Court has set aside the judgement passed by the Labour Court in Complaint No.65 of 1998 whereby the petitioner was directed to be reinstated in services of respondent with continuity of service without any back wages.

2. The challenge on the ground that the Labour Court after taking into consideration the past record of the petitioner had set aside the order of dismissal holding the same to be shockingly

disproportionate, the Revisional Court has set aside the said order and confirmed the order of dismissal from service issued against petitioner by the respondent.

3. It is not in dispute that the misconduct alleged against the petitioner has been clearly established and the Labour Court has held that the enquiry conducted in that regard was fair and just, and finding in that respect has attained finality. The misconduct relates to dishonesty on the part of petitioner in preparing test reports without having any authority to do so and thereby favouring some of his clients with an intention to have monetary gain. Once the misconduct which related to dishonest act on the part of petitioner was clearly established and the same was not challenged by the petitioner, the Labour Court was clearly in error in interfering in the punishment of dismissal imposed on the petitioner by his employer. The quantum of punishment is primarily to be decided by the employer and law in this context is well settled. Interference in the punishment can only be in case where the same is shockingly disproportionate to the proved misconduct. By no stretch of imagination it can be said that once

the dishonest conduct of the employee is established the order of dismissal can be said to be shockingly disproportionate to the proved misconduct. In case of proved dishonesty it would not be proper for the Labour Court taking shelter of the past record to interfere in the punishment imposed by the employer, while merely using the phrase that the same is shockingly disproportionate to the proved misconduct. Viewed from this angle, therefore, no fault can be found with the order passed by the Industrial Court confirming the punishment imposed by the employer upon the petitioner for the proved misconduct.

4. The impugned order does not disclose any jurisdictional error as well, so as to interfere in the writ jurisdiction under Article 227 of Constitution of India. Therefore, the petition fails and it is rejected.

(R.M.S.KHANDEPARKAR, J.)